

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
CASE NO. 4:09-CV-126-FL

DR. ELIZABETH GAIL MARSAL,

Plaintiff,

v.

EAST CAROLINA UNIVERSITY, a constituent of the University of North Carolina, and Dr. James Anderson, in his individual capacity and official capacity,

Defendants.

DEFENDANTS' MOTION FOR COSTS

PURSUANT to F.R. Civ. P. Rules 54(d) and 68(d), Defendants East Carolina University (ECU) and Dr. James Anderson hereby request that the Court award costs incurred in defending the action brought by Plaintiff through the present. In support of this Motion, defendants show the Court the following and attach declarations from undersigned counsel and Anne W. Jenkins, Associate Vice Chancellor for Financial Services at ECU and exhibits to these declarations:

1. Plaintiff filed this action on 22 July 2009 against ECU; Dr. James F. Anderson, in his individual capacity and official capacity; Dr. Madhava Bodapati, in his individual and official capacity; Dr. Margie Gallagher, in her individual and official capacity; Dr. Marilyn Sheerer, in her individual and official capacity; and Dr. Steve Ballard, in his individual and official capacity.
2. Defendants made an Offer of Judgment of \$40,000 to Plaintiff on 11 August 2010 which was not accepted.

3. After the Court ruled upon defendants' motion for summary judgment by Order entered on 15 April 2011, the only remaining defendants were ECU and Dr. Anderson. Plaintiff's remaining claims were against ECU for violations of 42 U.S.C. § 2000e (Title VII) and the Family Medical Leave Act; and against Dr. Anderson individually for violations of 42 U.S.C. § 1983.

4. Plaintiff's three claims were tried before a jury from 24 January 2012 through 1 February 2012. The verdict was read in open court on 1 February 2012 and subsequently filed on the same day (DE # 143). The jury awarded plaintiff no damages on any of her claims against either of the defendants.

5. Final judgment was filed and entered on 17 February 2012 where by the Court decreed that "plaintiff shall recover nothing and that this action is dismissed." (DE # 150)

6. Given that defendants prevailed, in that Plaintiff recovered nothing, defendants are seeking their costs. Defendants have attached the declaration of Anne W. Jenkins, Associate Vice Chancellor for Financial Services, detailing the necessary costs incurred by defendants in defending against the present action. The amount of those costs are \$ 15,008.95. No attorney fees are sought as counsel was provided by the North Carolina Department of Justice.

Respectfully submitted, this the 1st day of March 2012.

ROY COOPER

Attorney General

/s/ Kimberly D. Potter
Kimberly D. Potter
N.C. State Bar No. 24314
Assistant Attorney General
Attorney for Defendants
N. C. Department of Justice
P. O. Box 629
Raleigh, North Carolina 27602
Telephone: (919) 716-6920
Fax: (919) 716-6764
Email: kpotter@ncdoj.gov

CERTIFICATE OF SERVICE

I certify that the foregoing **DEFENDANTS' MOTION FOR COSTS** was electronically filed on 1 March 2012 with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Mary-Ann Leon, attorney for Plaintiff, and I hereby certify that I have mailed the document to the following non CM/ECF participants: none.

This the 1st day of March 2012.

ROY COOPER
Attorney General

/s/ Kimberly D. Potter
Kimberly D. Potter